

Annette Ramirez

From: Blake Fixler
Sent: Monday, October 03, 2016 1:09 PM
To: cr_board_clerk Clerk Recorder
Subject: Correspondence Re Agenda Item 22
Attachments: Correspondence Re 10-4 Item #22 .pdf

For your review.
Thank you.

Blake Fixler
Administrative Assistant III
Board of Supervisors
San Luis Obispo County
www.slocounty.ca.gov
Direct Line 805-781-5498

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October 3, 2016

Via Hand Delivery

File No. 3386-01

Frank Mecham
Board of Supervisor, District 1
Room D-430
County Government Center
San Luis Obispo, California 93408

Bruce Gibson
Board of Supervisor, District 2
Room D-430
County Government Center
San Luis Obispo, California 93408

Forwarded
to the
Clerk Recorder

Adam Hill
Board of Supervisor, District 3
Room D-430
County Government Center
San Luis Obispo, California 93408

Lynn Compton
Board of Supervisor, District 4
Room D-430
County Government Center
San Luis Obispo, California 93408

Debbie Arnold
Board of Supervisor, District 5
Room D-430
County Government Center
San Luis Obispo, California 93408

Re: *Appeal by Eileen Roach of the Planning Commission's Approval of a Request by Campbell-Sheppard/Dan Lloyd for a Tentative Tract Map and Development Plan/Coastal Development Permit*

Dear Honorable Supervisors:

Thank you for this opportunity to provide you with important information concerning our above-referenced appeal. My firm represents Appellants Eileen Roach and her mother, Kathy Oliver, who reside across the street from Mr. Lloyd's project (Project) at 24 Cypress Glenn Court, Cayucos, California 93430. The purpose of this letter is to explain the reasons why we believe our appeal should be granted and the decision of the Planning Commission reversed.

1. The Real Property Division Ordinance Coastal Violation

The Project violates the Real Property Division Ordinance (RDP) as a result of Mr. Lloyd's request that the County abandon a portion of Cypress Glen Court, which includes a portion of Little Cayucos Creek, a recognized Environmentally Sensitive Habitat. (see page 3, Figure 1 of Staff's Agenda Item Transmittal) This abandonment request (Requested Abandonment) is discussed below in Section 4. If the Requested Abandonment is granted by the Board, Cypress Glen Court will become a *private easement*. Cypress Glen Court currently

serves four single-family residences. A private easement can only be approved if it serves five or less parcels. Since there are already four residences being served, the RPD would allow this freshly-minted private easement, Cypress Glen Court, to serve only a single residence in the Project. Appellant is fine with that result. However, that is not the result. To the contrary, the Project will serve eleven single-family residences via the Cypress Glen Court private easement, rather than the mandated-maximum of five.

Specifically, RPD 21.03.010 provides: The planning commission and the subdivision review board, as the advisory agency, shall not approve or conditionally approve a tentative tract map or tentative parcel map unless it determines that all of the following criteria are satisfied:

(d)(7) Private easements, if approved, by the planning commission or subdivision review board, may serve as access to no more than an ultimate of five parcels, including parcels not owned by the divider. The number of parcels served by any private easement shall include existing parcels and all future parcels which could be created in the future according to the applicable general plan.

In order to cure this violation of the RPD, the Project seeks to exploit Section 21.03.020, which provides for "Adjustments." Adjustments are not permitted save very limited circumstances. Section 21.03.020(a) allows the Planning Commission "in cases where *undue hardship* would result from the application of the regulations established in this title, approve adjustments or conditional adjustments to these regulations."

Here, there is no undue hardship to either the Project or Mr. Lloyd. First, undue hardship has not and cannot be defined as the inability to maximize the density of a parcel or the inability of a developer to maximize his profits. Second, since the developer himself is seeking the Requested Abandonment resulting in the violation of the RPD, undue hardship cannot be defined as a condition intentionally created by the developer, i.e., the Requested Abandonment.

Section 21.03.020 also provides that the Planning Commission shall not "approve any adjustment request to the standards set forth in Section 21.03.10 or for required offers of dedication unless it makes each of the following findings:

- (1) That there are special circumstances or conditions affecting the subdivision;
- (2) That the granting of the adjustment will not have a material adverse effect upon the health and safety of persons residing or working in the neighborhood of the subdivision; and
- (3) That the granting of the adjustment will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood of the subdivision."

Of course, when the existing 4-parcel Project was created years ago, the developer was required to offer for dedication a portion of his land to the County for Cypress Glen Court. Now

that Mr. Lloyd wants to maximize single family residential density on this half-acre site by making it 8 parcels, he seeks a return of that dedicated land from the County in his Requested Abandonment. The ultimate irony is Mr. Lloyd's intentional transformation of quiet, little Cypress Glenn Court into a private easement while simultaneously seeking a free pass on the RPD limitation of five residences. Of course having the Court serve eleven single family residences instead of the mandated maximum of five will hugely increase traffic on the Court including vehicle vs. vehicle conflicts and vehicle vs. pedestrian conflicts, decrease safety and negatively impact the property values of the four residences who rely on Cypress Glen Court for access. These are all palpable, material adverse effects, detriments and permanent impacts on the Project's neighbors.

Rather than fairly and thoroughly considering the material adverse effects on the established neighborhood by rerouting traffic onto Cypress Glen Court, the Planning Commission and its staff simply cut and pasted the "findings" drafted by the developer in his February 8, 2016 letter to the County--compare page 23 of 33 of Staff's Attachment 1 to pages 54 and 55 of Staff's Attachment 8). The justifications offered by the Developer and blessed by staff (e.g., avoiding decreased Project density due to long-existing site conditions (slope; riparian habitat), decreased E Street parking, efficient trash collection, etc.) provide no evidence of undue hardship whatsoever. Moreover, ignoring the RPD in this instance will cause such an obvious, material, detrimental and adverse effect on the existing neighborhood, deviation from the RPD could not have been seriously considered.

The simple answer is that the Project should to continue to take its access from E street as currently configured for the Project's existing, inhabited residence. All other residences on E Street take their access from E Street. The Project needs to as well.

2. The Density, Maximum Floor Area and Minimum Open Area Coastal Violations

The Project is a planned development in the Residential Multi-Family Category, so its density is dictated by Section 23.04.084. (Section 23.04.028 d. (2)) Section 23.04.084 (b) places express limitations on the percentage of the Project's total Usable Site Area that can be dedicated to gross floor area of all residential structures, including upper stories. The Planning Commission applied a medium intensity factor for the Project.

In order to properly measure the percentage of the Project's Usable Site Area that is dedicated to floor area, certain defined terms must be understood and applied.

The term "Usable Site Area" means "Site Area, Usable" (Section 23-11-030).

The term "Site Area, Usable" means Site Area, Net minus any portions of the site that are precluded from building construction by natural features or hazards, such as areas subject to inundation by tides or the filing of reservoirs or lakes. (Section 23-11-030)

The term Site Area, Net means Site Area, Gross minus any ultimate street rights of way and any easements (but not open space easements) that limit the surface use of the site for building construction. (Section 23-11-030)

The term Site Area, Gross means the total area of a legally created parcel (or contiguous parcels of land in single or joint ownership when used in combination for a building or permitted group of buildings), including any ultimate street right-of-way, existing rights-of-way deed to the parcel, and all easements (except open space easements), across the site. (Section 23-11-030)

Here, Site Area, Gross = the total project site, i.e., Lots 1-8 (39432 sq. ft.-see page 7 of Staff's Attachment 1) minus the area of the open space easement, i.e., Lot 8 (21090 sq. ft.), or 18342 sq. ft.

Next, Site Area, Net = Site Area, Gross (18342 sq. ft.) minus the ultimate street right of way/easement, here accepted as 7000 sq. ft. by the Planning Commission (see page 5 of Staff's Attachment 8) in connection with the Requested Abandonment, or 11342 sq. ft.

(Staff agrees that this 7000 sq. ft. must be deducted from Site Area, Gross, as an easement will replace the right of way if the Requested Abandonment is granted. See page 19 of Staff's Attachment 8- "Property owners retain the right to access properties through the underlying easement that stays in place.")

Next Site Area Usable = Site Area, Net in this instance or 11342 sq. ft.

Section 23.04.084 (b) limits maximum floor area to 48% of the Site Area Usable since a medium intensity factor was applied to the Project. $.48 \times 11342 = 5444$ sq. ft. maximum gross floor area. However, the gross floor area for this project (page 7 of Staff's Attachment 1) is 15672 sq. ft. Regardless, in order to legally build 15672 sq. ft. of gross floor area, the Project needs a Site Area, Useable of 32650 sq. ft. The Project will never have sufficient site area because of the Project's 21090 sq. ft. open space easement (Lot 8).

Section 23.04.084 (b) likewise limits minimum open area to 45% of the Site Area Usable for this Project based upon a medium intensity factor. Here according to the Project's plans (see pages 115, 120 125 of Staff's Attachment 8) the building and parking footprints are too large and, for the same reasons illustrated above, the Project fails to provide sufficient minimum open area under applicable law.

3. The Cayucos Urban Area Standards/Estero Area Plan Coastal Violation

The Cayucos Urban Area Standards within the Estero Area Plan provide that density for this Project shall not be more than ten units per acre. (Estero Area Plan, page 7-57). Therefore, in order for the Project to have 7 legal units, the project would require at least .7 acres of land. The Project however, has only .68 acres of land (see page 1 of Staff's Agenda Item Transmittal, box 4), fixing the maximum number of units for this Project at 6.

4. The Requested Abandonment Includes an ESH and Should Be Denied

Cypress Glen Court should not be sacrificed simply to enable this developer to maximize density of this Project. Again, a portion of Little Cayucos Creek, a recognized Environmentally Sensitive Habitat, is part of the Requested Abandonment. The detriment to the existing neighborhood and the public caused by the Requested Abandonment includes placing maintenance and replacement costs of the street directly on the neighborhood after the developer departs with his profits. Inasmuch as the sole purpose for the developer to request the Abandonment is to increase density, the traffic impacts caused by almost tripling the single family residences using this Court will vastly increase maintenance and replacement costs. Surely, the cost to the County of maintaining this Court based upon its current use must be nil, particularly in comparison to the detriment abandonment will bring to the Environmentally Sensitive Habitat, the existing neighborhood and the public. Abandonment should not be granted. The Appeal should be granted.

5. The Environmentally Sensitive Habitat Set Back Coastal Violation.

The Local Coastal Program requires that buildable areas be outside (i.e., more than) the required 50-foot setback. Here, the Local Coastal Program is further buttressed by the Estero Area (Coastal) Plan, which is *more* restrictive, stating that: “**Development** shall be setback from coastal streams as shown in Table 7-2,” which for Little Cayucos Creek is 20 feet. (see page 7-44-45 of Estero Area Plan) Clearly, the term “Development” is far more inclusive than the term Buildable area. For example, the creation of residential backyard is development. The installation of a fence is development. The building footprint must be 50 feet away from Little Cayucos Creek.

Here, the Project conditions and plan documents approved by the Planning Commission clearly violate both the Local Coastal Program and the Estero Area Plan. The Project’s buildings are located within the applicable 50-foot setback for buildings and the Project’s outdoor use areas, backyards and fences are within the applicable 20-foot setback for development. (See page 131 of Staff’s Attachment 8.

6. Response to Staff’s Agenda Item Transmittal

The Project seeks approval of a subdivision. Policy No. 4 of the Local Coastal Program applies to protect environmentally sensitive habitat contained within a parcel being considered for subdivision. Here, the Project seeks the subdivision of a parcel containing a portion of Little Cayucos Creek, an acknowledged environmentally sensitive habitat. Each of Sections 1 through 5, above, directly impact the environmentally sensitive habitat of Little Cayucos Creek and are all triggered by this appeal.

October 3, 2016

My clients and I sincerely appreciate your time, attention and diligence in this matter. We look forward to seeing you.

Very truly yours,

Ogden & Fricks LLP

A handwritten signature in blue ink, appearing to read "Roy E. Ogden", with a long horizontal flourish extending to the right.

Roy E. Ogden